

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Robert G. Taub, Vice Chairman;  
Mark Acton;  
Tony Hammond; and  
Nanci E. Langley

Glenoaks Station Post Office  
Burbank, California

Docket No. A2013-05

PUBLIC REPRESENTATIVE RESPONSE  
TO UNITED STATES POSTAL SERVICE  
MOTION TO DISMISS PROCEEDINGS

(July 23, 2013)

The Public representative hereby responds to the Postal Service's Motion to Dismiss proceedings concerning the appeal of the Postal Service's decision to discontinue service at the Glenoaks Station Post Office (Glenoaks Station), located at 1634 North San Fernando Boulevard, Burbank California, an unincorporated area in Los Angeles County.<sup>1</sup>

The Postal Service asserts that the appeals should be collectively dismissed, for lack of ripeness and subject matter jurisdiction. Motion at 1. The Postal Service argues that the Commission should dismiss the appeals on three grounds: (1) the original six appeals are premature as the Final Determination to

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<sup>1</sup> Motion of United States Postal Service to Dismiss Proceedings, July 15, 2013 (Motion).

Close the Glenoaks Station was not posted at the time the appeals were filed; (2) the Postal Service's action constitutes a rearranging of retail facilities within a community, and as such is outside the subject matter jurisdiction of section 404(d)(5); and (3) the Commission does not have jurisdiction over the closing of a postal station or branch. Motion at 1.

After careful review of the Postal Service's Motion to Dismiss, Errata to the Motion to Dismiss,<sup>2</sup> Administrative Record and its supplements,<sup>3</sup> and other materials submitted in the above-captioned matter, the Public Representative finds the Postal Service's discontinuance is not subject to 39 U.S.C. § 404, and not within the Commission's jurisdiction. This is the sole ground upon which the Postal Service's Motion to Dismiss should be granted.

I. At Least One Set of Petitions Must Be Ripe

The Postal Service contends the original six Glenoaks Station petitions, filed on July 2 and July 8, 2013, were filed prior to the posting of the final determination on July 16, 2013. As a result, these petitions are premature and invalid. The Public Representative disagrees, yet recognizes that this issue has become moot with the subsequent filing of additional petitions on July 19, 2013.

There are now two sets of petitions in this case: the first, consists of six filed prior to July 16, 2013;<sup>4</sup> the second, consists of two filed on July 19, 2013.<sup>5</sup>

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<sup>2</sup> Notice of the United States Postal Service of Filing Errata, July 18, 2013, at 1 (Motion Errata).

<sup>3</sup> United States Postal Service Notice of Filing Administrative Record, July 15, 2013, (AR); United States Postal Service Notice of Filing of Supplemental Documents for Inclusion in the Administrative Record, July 18, 2013 (AR Supp 1); Notice of Filing of Supplemental Documents for Inclusion in the Administrative Record, July 19, 2013 (AR Supp 2).

<sup>4</sup> Petition for Review Received from Charlotte E. Costan Regarding Glenoaks Station Post Office, Burbank, CA 91504, July 2, 2013 (Costan Petition); Petition for Review Received from Anna May Nelson Regarding Glenoaks Station Post Office, Burbank, CA 91504 (Nelson Petition); Petition for Review Received from Sharon Wright Regarding Glenoaks Station Post Office, Burbank, CA 91504 (Wright Petition); Petition for Review Received from Linda Ly Regarding Regarding Glenoaks Station Post Office, Burbank, CA 91504 (Ly Petition); Petition for Review Received from Sharyn Engel Regarding Glenoaks Station Post Office, Burbank, CA 91504 (Engel Petition); Petition for Review Received from Victoria Lova Regarding Glenoaks Station Post Office, Burbank, CA 91504 (Lova Petition). Attached to the Lova Petition is an unstamped copy of the Postal Service's Notice of Final Determination.

Whether the Commission agrees with the Public Representative that the original six petitions are valid,<sup>6</sup> or is persuaded by the Postal Service that only petitions filed after July 16, 2013 may be considered valid,<sup>7</sup> at least one timely filed petition exists and is sufficient to justify the opening of an appellate case regarding the discontinuance of the Glenoaks Station.

Exactly which petitions are valid, with regards to the instant Motion to Dismiss, is inconsequential. The Public Representative concludes that any of the petitions opposing the discontinuance of Glenoaks Station can only breathe momentarily life into an appellate case, as the case must be dismissed for lack of subject matter jurisdiction.

## II. This Matter Concerns the Consolidation and Rearrangement Within a Community

The Glenoaks Station discontinuance does not constitute a closing for the purposes of 39 U.S.C. § 404(d). It is a consolidation or rearrangement of postal services within a community, a matter outside the appellate jurisdiction of the Commission.<sup>8</sup>

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<sup>5</sup> Petition for Review Received from Sharon Galluccio Regarding Glenoaks Station Post Office, Burbank, CA 91504, July 19, 2013 (Galluccio Petition); and Petition for Review Received from Marlene Keables Benda Regarding Glenoaks Station Post Office, Burbank, CA 91504, July 19, 2013 (Benda Petition).

<sup>6</sup> A plain reading of the Notice of Final Determination to Close Glenoaks Station (Notice), dated June 20, 2013, reveals that the Postal Service issued a final determination on or before June 20, 2013, and announced this issuance to customers. In effect, the Postal Service not only communicated that a final determination was available as of June 20, 2013, it proceeded to provide instructions on how it could be appealed. Section 404 states that the Postal Service's final determination must be in writing, address the requisite considerations, and be made available to persons served by the post office. 39 U.S.C. § 404(d)(3). Glenoaks Station customers relied on the information of the Postal Service's Notice that a final determination had been issued, the reasons for it, and the fact that it was appealable within 30 days. In addition to reliance on the Notice, the Postal Service's Administrative Record, namely: the Postal Service Log of Discontinuance Actions (Log), which states the Final Determination was posted and removed at affected offices and round-dated June 20, 2013 (AR Item No. 17); and the first page of the Glenoaks Station final determination included in the Administrative Record, which states the dates of "posting" and "removal" to be June 20, 2013 and July 22, 2013, respectively (FD at 1), both support a June 20, 2013, posting of the final determination. Subsequently, this evidence affirms the timeliness of the original six petitioners' appeals.

<sup>7</sup> Motion Errata at 1.

<sup>8</sup> 39 U.S.C. § 404; 39 CFR 241.3(a)(2).

The movement or shifting of postal services within the same community does not constitute a “closing” under Commission precedent.<sup>9</sup> The Commission is clear that “the Postal Service is not required to follow the formal section 404[(d)] procedure when it is merely rearranging its retail facilities in a community”<sup>10</sup> because “[t]he requirements of section 404[(d)] do not pertain to the specific building housing the post office; but rather are concerned with the provision of a facility within the community.”<sup>11</sup>

In the present case, Glenoaks Station customers’ delivery service will not be interrupted. The Postal Service will continue to provide retail and city delivery to Glenoaks Station customers by and under the administrative responsibility of the Burbank Post Office, located 1 mile away. Motion at 4. The community will not experience a decrease or extinguishment of retail services. Glenoaks Station customers will continue to have access to numerous alternative postal retail locations, nine of which are located within one mile radius and twenty-eight are located within a three mile radius, of the Glenoaks Station. Motion at 6, FN 8. The Postal Service provides, should Glenoaks Station customers choose to use replacement Post Office Box service at the Downtown Burbank Post office, located 1.4 miles away, there will be no change in post office box holders’ addresses or ZIP Code.<sup>12</sup> There is no claim or evidence presented that indicates this rearrangement will have an adverse affect on retail and delivery services of Glenoaks residents and businesses.

The Postal Service’s discontinuance of Glenoaks Station is consistent with 39 U.S.C. § 403(b)(3) which authorizes it to “establish and maintain postal facilities of such character and in such locations, that postal patrons throughout

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<sup>9</sup> Docket No. A2010-3, *In re East Elko Station, Elko, Nevada*, Order No. 477, June 22, 2010 (East Elko); See Docket No. A2012-2, Order Dismissing Appeal, Order No. 448, April 27, 2010 (Steamboat Springs).

<sup>10</sup> Docket No. A2007-1, Order No. 37 at 6, (citing Docket A82-10, Order 436, *In re Oceana*, at 6).

<sup>11</sup> *Id.*, (citing, *In re Oceana* at 7); see, also Docket No. A83-30, *In re Knob Fork, WV*, Comm’n Op. Remanding Determination for Further Consideration – 39 U.S.C. § 404(b)(5), January 18, 1984.

<sup>12</sup> AR Supp1, Item No. 36, 38; Lova Petition at 2.

the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services.” The Commission has consistently held that the requirements of section 404(d) do not apply to such rearrangements. The Postal Service’s planned rearrangement of retail services within the community of Glenoaks Station is not subject to review under section 404(d). For this reason, Petitioners’ appeals must be dismissed.

### III. The Commission Has Jurisdiction Over Stations and Branches

The Commission has repeatedly rejected the Postal Service’s assertions that stations and branches are not “post offices” under section 405(d)(5).<sup>13</sup> In its Motion to Dismiss, the Postal Service has offered no new arguments to support its position. Accordingly, this ground for dismissal should be summarily rejected.

### IV. Conclusion

The discontinuance of Glenoaks Station is not subject to 39 U.S.C. § 404. The Postal Service’s Motion to Dismiss should be granted as it pertains to the Commission’s lack of appellate jurisdiction over consolidations and rearrangement of services within a community.

Respectfully Submitted,

/s/ Tracy N. Ferguson  
Public Representative

901 New York Avenue, N.W.  
Washington, D.C. 20268-0001  
(202) 789-6844; Fax (202) 789-6891

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<sup>13</sup> Docket No.A2010-3, *East Elko Station*, Order No. 477 (June 22, 2010) at 5-6; and Docket No.N2009-1, *Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches*, March 10, 2010 at 65-66.